

Department of the Army, DoD

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States, or DA personnel are named as defendant in a lawsuit or as respondent in an administrative proceeding. A nonexclusive listing of cases in which the United States has an interest include the following:

(1) Suits for damages, injunctive relief, or other action filed against the government or against DA personnel in their official capacity.

(2) Suits alleging individual liability arising from performance of official duties by DA personnel.

(3) Actions affecting DA operations or activities or which might require official action by DA personnel.

(4) Actions arising out of DA contracts, subcontracts, or purchase orders wherein the government might be required to reimburse a contractor for litigation expenses.

(5) Bankruptcy proceedings in which the United States or its instrumentalities may have an interest, including bankruptcies involving government contractors.

(b) *Command and agency responsibility.* Commanders and supervisors of Army units, installations, or organizations will ensure reports required by this section are promptly submitted.

(c) *Reports to HQDA.* Reports required by this regulation will be made telephonically or mailed to the responsible organization at DA. Appendix B to this part contains mailing addresses for these offices. Except in the situations described below, reports required by this chapter will be made to Litigation Division:

(1) Actual or potential litigation (or administrative infringement claims) involving patents, copyrights, or trademarks will be made to Intellectual Property Law Division.

(2) Reports of pending or prospective litigation involving taxation will be made to Contract Law Division.

(3) Communications, transportation, and utility services reports will be made to Regulatory Law Office.

(4) Reports involving environmental and natural resource litigation and administrative proceedings will be made to Environmental Law Division.

(5) Potential civil recovery reports in cases of procurement fraud and corruption will be made to Procurement Fraud Division.

(6) Reports involving the felony prosecution program and magistrate court prosecutions will be made to Criminal Law Division, OTJAG.

(7) Cases before the Armed Services Board of Contract Appeals and the General Services Board of Contract Appeals will be made to Contract Appeals Division.

(d) *Classified information.* Information required by this regulation will be submitted in an unclassified form if possible. If downgrading or declassification is not feasible, the classified material should be separated from the report and forwarded under separate cover.

(e) *Other reporting requirements.* Reports required by this chapter are in addition to and do not satisfy any other reporting requirement, such as the following: notifying the FBI of offenses pursuant to AR 27-10; submitting serious incident reports pursuant to AR 190-40; reporting procurement fraud or other irregularities per Defense Federal Acquisition Regulation Supplement, section 209.406-3 (48 CFR 209.406-3); reporting the exercise of criminal jurisdiction by foreign tribunals over U.S. personnel pursuant to AR 27-50; or, reporting bankruptcies per AR 37-103.

(f) *Reports control exemption.* The reports required herein are exempt from reports control under AR 335-15, paragraphs 3-3a(5) and 5-2e(4).

§516.16 Individual and supervisory procedures upon commencement of legal proceedings.

(a) *Individual procedures.* DA personnel served with civil or criminal process concerning a proceeding in which the United States has an interest (§516.15) will immediately inform their supervisor and furnish copies of process and pleadings. There is no requirement to notify supervisors of purely private litigation.

(b) *Supervisory procedures.* When supervisors learn that legal proceedings in which the United States has an interest have commenced, the supervisor will forward a copy of all process and pleadings, along with other readily available information, to the SJA or legal adviser. If no legal officer is available locally, the documents will

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be forwarded to the SJA or legal adviser of the next higher headquarters.

§516.17 SJA or legal adviser procedures.

(a) *Immediate notice to HQDA.* When an SJA or legal adviser learns of litigation in which the United States has an interest, and it appears that HQDA is not aware of the action, the SJA or legal adviser will telephonically notify the responsible HQDA office. (See §516.15(c)). Immediate notice is particularly important when litigation involves one of the following: a lawsuit against an employee in his individual capacity; a motion for a temporary restraining order or preliminary injunction; a habeas corpus proceeding; a judicial or administrative proceeding involving less than 60 days to file an answer; and, actions with possible Congressional, Secretarial, or Army Staff interest. For legal proceedings instituted in foreign tribunals, the SJA or legal adviser will also notify the major overseas commander concerned and the appropriate U.S. Embassy or Legation. A telephonic report to HQDA should include the following:

- (1) Title or style of the proceeding.
- (2) Full names and addresses of the parties.
- (3) Tribunal in which the action is filed, date filed, docket number, when and on whom service of process was made, and date by which pleading or response is required.
- (4) Nature of the action, amount claimed or relief sought.
- (5) Reasons for immediate action.
- (b) *Transmission of process, pleadings, and related papers.* Unless instructed otherwise by HQDA, the SJA or legal adviser will FAX or mail HQDA a copy of all process, pleadings, and related papers. Use of express mail or overnight delivery service is authorized.

(c) *Notice to U.S. Attorney.* If the legal proceeding is instituted in the United States, the SJA or legal adviser, unless instructed otherwise by HQDA, will notify the appropriate U.S. Attorney and render assistance as required.

§516.18 Litigation alleging individual liability.

See subpart D for procedures to follow when DA personnel, as a result of

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performance of official duties, are either sued in their individual capacities or face criminal charges.

§516.19 Injunctive relief.

(a) *General.* Plaintiffs may attempt to force government action or restraint in important operational matters or pending personnel actions through motions for temporary restraining orders (TRO) or preliminary injunctions (PI). Because these actions can quickly impede military functions, immediate and decisive action must be taken.

(b) *Notification to HQDA and U.S. Attorney.* The SJA or legal adviser will immediately notify Litigation Division or other appropriate office at HQDA when a motion for TRO or PI has been, or is about to be, filed. The SJA or legal adviser will also notify the responsible U.S. Attorney.

(c) *Actions by SJA or legal adviser.* The SJA or legal adviser will assist the DOJ or DA attorney responsible for the litigation. Installation attorneys or support personnel should begin accumulating relevant documentary evidence and identifying witnesses. If requested, installation attorneys will prepare a legal memorandum concerning the motion, giving particular attention to the following issues relevant to a court granting injunctive relief:

- (1) Plaintiff's likelihood of success on the merits.
- (2) Whether plaintiff will be irreparably harmed if injunctive relief is not granted.
- (3) Harm to defendant and other parties if injunctive relief is granted.
- (4) The public interest.

§516.20 Habeas Corpus.

(a) *General.* A soldier may file a writ of habeas corpus to challenge his continued custody (usually in a post court-martial situation) or retention in the Army. As is the case with injunctive relief in the preceding paragraph, installation SJAs and legal advisers must take immediate action.

(b) *Notification to Litigation Division and U.S. Attorney.* The SJA or legal adviser will notify Litigation Division and the responsible U.S. Attorney's Office immediately upon learning that a petition for writ of habeas corpus has